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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/465,853 12/17/99 ELSBERG

L 15497

EXAMINER
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QM32/0511

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WEBB, J	
ART UNIT	PAPER NUMBER

3761

DATE MAILED:

05/11/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.

09/465,853

Applicant(s)

ELSBURG ET AL.

Examiner

Jamisia A. Webb

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3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 25 April 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) 10,13,14,30 and 31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9,11,12,15-29 and 32-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

2. Claims 1-2, 7-9, 12, 15-20, 25-27, 29, 32-37, 39, 43-44 are rejected under 35 U.S.C. 102(e) as being anticipated by Blenke et al. (6,022,430). With respect to Claim 1, 20 and 37: Blenke discloses a diaper (20) with an absorbent chassis (44), a front waist region (22), a rear waist region (24), end edges (32), and side edges (30). Blenke also discloses a fit panel (70), with releasably engageable primary fasteners (62, column 14, lines 52-54) located on outboard edges (72), and a waist adjustment means that provide a pair of secondary fasteners (66, column 14, lines 49-56), and a pair of perforations lines, that provide the secondary fasteners (column 7, line 64 to column 8, line 15).
3. With respect to Claims 1, 7, 16, 20, 25, 33, 37, Blenke discloses the use of fasteners that releasably engage, such as hook and loop type fasteners (column 14, lines 45-52).
4. With respect to Claims 8 and 26, Blenke discloses the use of an attachment panel (68).
5. With respect to Claim 9, Blenke discloses the fit panel being linear (See Figure 4).
6. With respect to Claims 12, 17, 29, 34, and 43, Blenke discloses the fit panel being attached to the bodyfacing surface of the outercover (column 15, lines 31-65).
7. With respect to Claims 15, 18-19, 32, 35-36, and 44, Blenke discloses the side panels with provide the primary and secondary fasteners (See all figures, particularly Figure 4), with the

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primary fasteners releaseably engaging the front waist (column 16, lines 24-40), and the secondary fasteners greater than 5 percent the total width of the fit panel (see Figure 4).

8. With respect to Claim 27, Blenke discloses the diaper (20) with an outercover (42) with backsheet (46) and bodyside liner (48).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 11, 28 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blenke et al. (6,022,430) in view of Vogt et al. (6,149,638).

Blenke discloses that outercover of the diaper being made of non-woven material (column 9, lines 52-65), but fails to teach the outercover being necked non-woven.

Vogt discloses the an absorbent article with an extensible outercover being made of necked nonwoven spunbonded material (column 8, lines 2-5).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the outercover of the diaper of Blenke, being made of a necked non-woven material, as disclosed by Vogt, in order to make the outercover extensible so the absorbent pad does not tear, and absorbent material does not spill out of the article (see Vogt, column 1).

11. Claims 3-6, 21, 23-24, and 38-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blenke et al. (6,022,430) in view of Brandon et al. (5,916,203). Blenke and

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Schmidt fail to teach the use of the fit panel elongating at least 50% and comprising latent elastic material, an elastic member, and an elastomeric material.

Brandon discloses a composite material with elasticized portions that can be used in the elastic parts of absorbent articles and comprises a latent material (14), an elastic material (12) in which it comprised an elastomeric material (column 4, lines 48-52), and the elastic material having an elongation from 50% to 150% (column 6, lines 56-59).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the fit panel of Blenke comprise the material and elongate as disclosed by Brandon, in order for the elasticized portions to conform the garment to the wearer's body and prevent leakage. (see Brandon, column 1)

***Response to Amendment***

12. Applicant's arguments filed 4/25/01 have been fully considered but they are not persuasive.

13. With respect to Applicant's argument of the 102 (e) rejection of claims 1-2, 7-9, 12, 15-20, 25-27, 29, 32-37, 39, and 43-44 as being anticipated by Blenke et al. (6,022,430):

a. Applicant argues that the fit panel in the instant application is different and distinguishable from the fit panel disclosed by Blenke. The examiner has interpreted the claims as broadly as possible, and even though Blenke's fit panel is different from applicant's fit panel as shown in Figures 1 and 4-6 of the instant invention, Blenke does in fact disclose the fit panel as is claimed by the applicant.

b. With respect to Applicant's arguments that Blenke does not include a pair of primary fasteners: Blenke does infact disclose the belt loop material having primary

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fasteners on the body facing surface of the material. See Blenke, figures 4 and 5, and column 7, lines 47-48.

c. With respect to Applicant's argument that Blenke does not disclose a pair of laterally directed perforation lines: Blenke discloses that the ribbon of secondary fastener material and the ribbon of belt loop material (part of the fit panel) may not be completely severed from each other in the cutting process, therefore providing lines of perforations. The belt loop material is part of the fit panel, and the secondary material of the fasteners have lines of perforations with the belt loop material. Blenke discloses "lines of perforations can be broken in use to facilitate the adjustment of the secondary fasteners for improved fit" (column 8, lines 1-15), therefore Blenke does in fact provide secondary fasteners from laterally opposed sides of the fit panel. Rejection stands as stated above.

d. With respect to Applicant's arguments that Blenke does not disclose the fit panel including waist size adjustment means: Blenke discloses the "lines of perforations can be broken in use to facilitate the adjustment of the secondary fasteners for improved fit". The examiner considers this is me a waist size adjustment means. The belt with the secondary fasteners act as a waist size adjust means and is made so the belt is located within the diaper structure, not as an external component that is removable from the diaper. Furthermore, the secondary fastener material and the belt loops (part of the fit panel) are made from the same material and not fully separated, (see column 8, lines 1-15). The examiner considers the belt, with the secondary fasteners to be a waist size adjustment means that is integral with the fit panel.

e. With respect to Applicants arguments of Claims 2, 7-9, 12, 15-19, 25-27, 29, 3-36, and 43-44 as being anticipated by Blenke et al: Applicant's have argued that Blenke does

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not disclose the features in these claims due to the fact that these claims are drawn to the fit panel, and Blenke does not disclose a fit panel. The examiner has stated above that Blenke does in fact disclose a fit panel that meets all the limitations in the independent claims. The Applicant has only argued that the rejection of these claims is invalid because Blenke does not disclose a fit panel, the examiner, as described above, considers Blenke to disclose the claimed fit panel, therefore the rejection stands as stated above.

14. With respect to Applicant's arguments of the 103 rejections of Blenke et al. (6,022,430) in view of Vogt (6,149,638) for claims 11, 28, and 42, and Blenke et al. (6,022,430) in view of Brandon et al. (5,916,203) for claims 3-6, 21, 23-24, 38-41: Applicant has only argued that a prima facie case of obviousness has not been established due to the fact that the combination of references do not disclose all claimed limitations, specifically a fit panel. The examiner, as described above, considers Blenke to disclose the claimed fit panel, therefore the rejection stands as stated above.

### ***Conclusion***

1. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,


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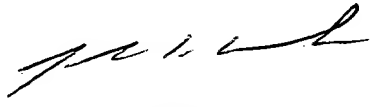
however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamisue A. Webb whose telephone number is (703) 308-8579. The examiner can normally be reached on M-F (8:30 - 5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John G. Weiss can be reached on (703) 308-2702. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

jaw   
May 7, 2001

  
John G. Weiss  
Supervisory Patent Examiner  
Group 3700